



California Regional Water Quality Control Board

San Diego Region

Alan C. Lloyd, Ph.D.
Secretary for
Environmental
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
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Arnold Schwarzenegger
Governor

June 21, 2005

S. Wayne Rosenbaum, Esq.
Foley & Lardner, LLP
Representing Fieldstone Communities, Inc and Florida Soutchase, L.P.
402 West Broadway Suite 2300
San Diego, California 92101-3542

In reply refer to:
10-3020478.02:melbf
10-321382.02:melbf

Dear Mr. Rosenbaum:

Administrative Civil Liability Order No. R9-2005-0166 Under Water Code § 13385 for Violations of Water Code § 13376 and State Board Order No. 99-08-DWQ at the Morro Hills Construction Site, Oceanside, California (WDID Nos. 9 37C321382 and 9 37C320478)

On June 8, 2005, the California Regional Water Quality Control Board, San Diego Region (Regional Board) adopted Administrative Civil Liability (ACL) Order No. R9-2005-0166 assessing a \$262,500 liability against Fieldstone Communities, Inc and Florida Soutchase, L.P. for violations of Water Code section 13376 and California State Water Resources Control Board (State Board) Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002, Waste Discharge Requirements (WDRs) for Discharges of Storm Water Runoff Associated With Construction Activity*. A signed copy of ACL Order No. R9-2005-0166 is enclosed. The Regional Board deposited the three checks totaling \$262,500 you submitted on June 7, 2005 into the State Board's State Water Pollution Cleanup and Abatement Account. The Regional Board will transmit to you at a later date a final invoice for Regional Board staff oversight costs of Cleanup and Abatement Order Nos. R9-2005-0033 and 0044, which were rescinded in ACL Order No. R9-2005-0166.

Please contact Frank Melbourn of my staff at (619) 467-2973 if you have any questions regarding this matter. The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Sincerely,

JOHN H. ROBERTUS
Executive Officer

California Environmental Protection Agency

Enclosure: ACL Order No. R9-2005-0166

- Copy with enclosure:
1. Mike Bingham
 Fieldstone Communities, Inc.
 5465 Morehouse Drive, Suite 250
 San Diego, California 92121
 2. Robert Henninger
 Florida Southchase, L.P.
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 3. Mo Lahsaie, City of Oceanside, mlahsaie@ci.oceanside.ca.us
 4. Christopher Means, Regional Board
 5. Bob Morris, Regional Board

JHR:mpm:mja:ftm

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ORDER NO. R9-2005-0166
ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
FIELDSTONE COMMUNITIES, INC.
AND
FLORIDA SOUTHCHASE, L.P.
VIOLATIONS
OF
CALIFORNIA WATER CODE SECTION 13376
AND
STATE WATER RESOURCES CONTROL BOARD
ORDER NO. 99-08-DWQ

The San Diego Regional Water Quality Control Board (hereafter Regional Board), having received an offer by Fieldstone Communities, Inc. (hereafter Fieldstone) and Florida Southchase, L.P. (hereafter Southchase) (hereafter collectively referred to as Dischargers) to waive its right to a hearing regarding violations alleged in Complaint Nos. R9-2005-0107 and R9-2005-0108, dated March 17, 2005, (Complaints) and settle its civil liability for any violations alleged therein by paying Civil Liability in the amount of \$262,500 (instead of the \$262,500 and \$242,500 respectively recommended in the Complaints), and having provided public notice thereof and not less than thirty (30) days for public comment on the settlement offer, and having received no comments objecting to the settlement, and having considered the settlement offer, finds as follows:

1. The State Water Resources Control Board (hereafter State Board) has issued updated statewide general waste discharge requirements for discharges of storm water runoff associated with construction activities involving disturbance of one acre of soil, or more. [*Order No. 99-08-DWQ, NPDES No. CAS000002 (Order).*]
2. Fieldstone owns approximately 72 acres, while Southchase owns approximately 383 acres of property in the "Morro Hills" development located along Douglas Drive and Vandegrift Boulevard, City of Oceanside, San Diego County, California. Fieldstone filed a "Notice of Intent," as required by Section A.2. of Order No. 99-08-DWQ on May 2, 2003 (WDID No. 9 37C321382). Southchase filed a Notice of Intent on March 10, 2003 (WDID No. 9 37C320478).
3. Dischargers failed to implement or maintain Best Management Practices (BMPs) set forth in its Storm Water Pollution Prevention Plan, in violation of section C.2 of the Order for 135 days on July 19, 2004, August 13, 2004, and October 1, 2005 through February 10, 2005. The failure to install necessary BMPs resulted in six unauthorized discharges of sediment to the City of Oceanside's Municipal Separate Storm Sewer System (MS4) and Pilgrim Creek, a tributary to the San Luis Rey River, in violation of Water Code section 13376 and section A.2 of the Order on November 16, 2004,

December 28, 2004, December 31, 2004, January 4, 2005, January 12, 2005, and January 20, 2005.


4. On January 26, 2005 the Executive Officer issued Cleanup and Abatement Order (CAO) Nos. R9-2005-0033 and 0044 to the Dischargers in response to the alleged violations. On March 9, 2005 the Regional Board affirmed and amended the CAOs.
5. Consideration of the factors prescribed in California Water Code Section 13385(e) based upon information available to the Regional Board prior to the hearing supported assessment of civil liability in the amount of \$262,500 for Fieldstone and \$242,500 for Southchase as follows:
 - a. \$10,000 per day for discharging sediment to "Waters of the United States" for six days for Fieldstone and four days for Southchase for a total of \$60,000 and \$40,000; and
 - b. \$1,500 per day for failing to implement an adequate Storm Water Pollution Prevention Plan (SWPPP) for 135 days for a total of \$202,500 each;
6. By accepting the settlement offer tendered by the Dischargers, involving payment of less than the recommended civil liability without the need for a hearing, the Regional Board will conserve valuable staff resources that would have been allocated to preparation for the hearing and responding to any administrative or judicial review requested by the Dischargers.
7. The Dischargers have brought the Morro Hills site into compliance with the Order and CAOs, and have agreed to ensure full compliance with the Order at all other current and future sites owned by the Dischargers within the State of California.
8. Furthermore, the reduced amount of liability tendered by the Dischargers is sufficient to deter the Dischargers from future non-compliance, and should act as a deterrent to non-compliance by other developers.
9. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with section 15321, Chapter 3, Title 14, California Code of Regulations.
10. The Regional Board incurred costs totaling \$10,057, which includes investigation, preparation of enforcement documents, and communication with the discharger and interested parties regarding the enforcement action.

IT IS HEREBY ORDERED that:

1. Civil liability is imposed on Fieldstone Communities, Inc. and Florida Southchase, L.P. in the amount of two hundred sixty-two thousand and five hundred dollars (\$262,500).

2. CAO Nos. R9-2005-0033 and 0044 are rescinded.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on June 8, 2005.



JOHN H. ROBERTUS
Executive Officer